

## SENATE BILL NO. 158

INTRODUCED BY L. GROSFIELD, DOHERTY, GRIMES, HALLIGAN, MCNUTT, MANGAN, NEWMAN,  
K. PETERSON

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INTERMEDIATE APPELLATE COURT;  
PROVIDING FOR DIRECT APPEAL TO THE SUPREME COURT IN CASES INVOLVING THE DEATH  
PENALTY OR LIFE IMPRISONMENT AND IN CASES INVOLVING THE CONSTITUTIONALITY OF A  
STATUTE; ALLOWING CERTAIN CASES TO BE ~~DIRECTLY FILED WITH~~ DECIDED BY THE SUPREME  
COURT ~~AFTER~~ IF THE SUPREME COURT GRANTS A PETITION TO BYPASS REVIEW BY THE COURT OF  
APPEALS; PROVIDING FOR DISCRETIONARY SUPREME COURT REVIEW OF COURT OF APPEALS  
DECISIONS IN CERTAIN CASES; PROVIDING FOR COURT OF APPEALS JUDGES TO BE INITIALLY  
APPOINTED BY THE GOVERNOR; PROVIDING FOR SUBSEQUENT ELECTION OF COURT OF APPEALS  
JUDGES AND FOR STAGGERED TERMS OF OFFICE; CLARIFYING THAT RETIRED DISTRICT COURT  
JUDGES MAY NOT BE CALLED FOR DUTY ON THE SUPREME COURT; AMENDING SECTIONS 3-1-101,  
3-1-102, 19-5-103, 19-5-301, 39-71-2904, AND 46-20-706, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Court of appeals -- terms of office -- panels -- judges -- salary. (1)**

There is a court of appeals that consists of five judges. The judges are elected as provided in [section 2]  
at the general election preceding the expiration of the terms of office of their predecessors, respectively,  
and hold their offices for staggered terms of 8 years from and after the first Monday of January  
succeeding their election.

(2) The judges of the court of appeals shall each year select one of their members as chief judge.

(3) The court of appeals shall sit in panels of three judges to conduct the business of the court.  
The decision of a majority of the judges of the panel to which a case is submitted constitutes the decision  
of the court of appeals for that case. The membership of the panels must be assigned and regularly  
rotated by the chief judge of the court of appeals in a manner that provides each judge the opportunity

1 to serve a proportionate amount of time with every other judge on the court.

2 (4) The judges of the court of appeals must be paid an amount equal to 95% of the salary set for  
3 a justice of the supreme court.

4 (5) The judges of the court of appeals are subject to the same provisions relating to selection,  
5 filling of a vacancy, term of office, discipline, removal from office, and retirement as are all other judges  
6 covered by Article VII of the Montana constitution.

7 (6) The number of retired judges called for duty by the chief judge of the court of appeals to aid  
8 and assist the court of appeals pursuant to 19-5-103 may not at any time exceed two, and a panel of the  
9 court of appeals may not contain a majority of retired judges.

10 (7) [Sections 1 through 8] do not create a right of appeal if that right is not otherwise provided  
11 or created by law.

12

13 **NEW SECTION.** **Section 2. Court of appeals -- districts.** (1) In this state, there are five court of  
14 appeals districts, with one judge elected from each district, distributed as follows:

15 (a) first district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill,  
16 Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole,  
17 Valley, and Wibaux Counties;

18 (b) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater,  
19 Sweet Grass, Treasure, and Yellowstone Counties;

20 (c) third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton,  
21 and Wheatland Counties;

22 (d) fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and  
23 Silver Bow Counties;

24 (e) fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties.

25 (2) (a) For purposes of this section and except as provided in subsection (2)(b), the district where  
26 a judge resides on the effective date of election, appointment, or reelection is considered the judge's  
27 district of residence during the term for which the judge is elected or appointed.

28 (b) A judge who is elected or appointed from a district other than the third district and who, during  
29 the judge's term on the court, becomes a resident of Helena, Montana, or resides within 50 miles of  
30 Helena may run for reelection in the judge's original district of residence, and that district is the judge's

1 district of residence during the term for which the judge is reelected.

2

3 NEW SECTION. **Section 3. Qualification and residence.** (1) In order to be eligible for the office  
4 of judge of the court of appeals, a person must:

5 (a) be a citizen of the United States;

6 (b) have resided in the state 2 years immediately before taking office; and

7 (c) have been admitted to practice law in Montana for at least 5 years prior to the date of  
8 appointment or election.

9 (2) Judges of the court of appeals shall reside within the state during their terms of office.

10

11 NEW SECTION. **Section 4. Decisions -- form -- when published.** (1) Decisions of the court of  
12 appeals must be in the form of an order accompanied by a memorandum opinion. The memorandum  
13 opinion may not be published unless publication is ordered by the court of appeals. All memorandum  
14 opinions must be filed with the clerk of the supreme court, are public records, and must be made available  
15 to the public in a manner determined by the court of appeals.

16 (2) In determining whether to publish a memorandum opinion, the court of appeals may take into  
17 consideration whether the decision:

18 (a) enunciates a new rule of law;

19 (b) applies an established rule of law to a factual situation significantly different from that in  
20 published opinions;

21 (c) resolves or identifies a conflict between prior court of appeals' decisions;

22 (d) will contribute to legal literature by collecting case law or reciting legislative history; or

23 (e) involves a case of substantial and continuing public interest.

24

25 NEW SECTION. **Section 5. Jurisdiction -- direct review by supreme court -- BYPASS AND removal**  
26 **of case.** (1) Except as provided in subsection (2), appeals in civil and criminal cases from Montana district  
27 courts and appeals from the workers' compensation court must be to the court of appeals.

28 (2) Appeals in capital cases, cases in which life imprisonment has been imposed, and cases  
29 involving the constitutionality of a statute must be to the supreme court.

30 (3) Any party to a case appealed to the court of appeals may file a petition in the supreme court

1 for direct review by the supreme court and to bypass the review by the court of appeals. ~~The procedure~~  
2 ~~and time for filing the petition must be as provided by rules of the supreme court. In deciding whether to~~  
3 ~~grant the petition, the supreme court may consider whether~~ WHEN the case:

4 (a) involves a question of first impression ~~or presents a novel legal question;~~

5 (b) involves a question of state or federal constitutional interpretation;

6 (c) raises a question of law regarding the validity of a statute; OR

7 (d) involves issues upon which there is an inconsistency in the decisions of the court of appeals  
8 or of the supreme court; ~~or~~

9 ~~—— (e) is one of significant public interest.~~

10 (4) THE PROCEDURE AND TIME FOR FILING THE PETITION MUST BE AS PROVIDED BY THE RULES OF THE SUPREME  
11 COURT.

12 ~~(4)(5)~~ When a petition for direct review is granted, the case must be docketed for decision by the  
13 supreme court.

14 ~~(5)(6) The supreme court shall by rule provide for the removal of~~ ON THE RECOMMENDATION OF THE  
15 CHIEF JUDGE OF THE COURT OF APPEALS, a case MAY BE REMOVED from the court of appeals to the supreme court  
16 for decision by the supreme court ~~at any time before a final decision has been made on the case by the~~  
17 ~~court of appeals. The removal may be on the recommendation of~~ MUST BE MADE BEFORE the court of appeals  
18 ~~or on motion of the supreme court~~ CLASSIFIES THE CASE. Cases may be removed from the court of appeals  
19 for decision by the supreme court for any one or more of the reasons set forth in subsection (3) or in order  
20 to regulate the caseload existing in either the court of appeals or the supreme court. The chief judge of  
21 the court of appeals and the chief justice of the supreme court shall at least monthly inform each other  
22 of the number and nature of cases docketed in the respective courts.

23  
24 NEW SECTION. Section 6. Decision -- DISCRETIONARY review by supreme court IN CERTAIN CASES.

25 Within ~~30~~ 20 days from the issuance of remittitur or entry of a final order or judgment for which remittitur  
26 is not issued BY THE COURT OF APPEALS IN A CASE DESCRIBED IN [SECTION 5(3)], any party to the case may  
27 petition the supreme court for review of the court of appeals' decision. Petitions for review must be filed  
28 and decided in the manner prescribed by the rules of the supreme court.

29  
30 NEW SECTION. Section 7. Administrative office -- arguments heard throughout state -- judges'

**offices.** The court of appeals must have its principal administrative office, permanent courtroom, judges' chambers, and staff in Helena, Montana. The court of appeals may hear arguments at sites throughout the state by designation of the chief judge of the court of appeals. The chief judge shall give primary consideration to the convenience of the litigants and counsel when designating sites to hear arguments. The administrator of the supreme court shall make arrangements for office and chambers space, courtrooms, and staff to be used by the court of appeals.

NEW SECTION. **Section 8. Clerk -- administrator -- duties -- expenses of court -- rules.** The clerk of the supreme court serves as the clerk of the court of appeals. The administrator of the supreme court shall provide facilities, supplies, equipment, and support staff needed by the court of appeals. All expenses of the court of appeals must be included in the budget of the supreme court. The supreme court shall adopt rules to implement [sections 1 through 8].

**Section 9.** Section 3-1-101, MCA, is amended to read:

**"3-1-101. The several courts of this state.** The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;

(2) the supreme court;

(3) the court of appeals;

~~(3)~~(4) the district courts;

~~(4)~~(5) the municipal courts;

~~(5)~~(6) the justices' courts;

~~(6)~~(7) the city courts and ~~such~~ other courts of limited jurisdiction ~~as~~ that the legislature may establish in any incorporated city or town."

**Section 10.** Section 3-1-102, MCA, is amended to read:

**"3-1-102. Courts of record.** The court of impeachment, the supreme court, the court of appeals, the district courts, and the municipal courts are courts of record."

**Section 11.** Section 19-5-103, MCA, is amended to read:

**"19-5-103. Call of retired judge for duty.** (1) (a) Every If physically and mentally able, a judge or

1 justice who has voluntarily retired after 8 years of service ~~must, if physically and mentally able, be is~~  
2 subject to call for duty by the:

3 (i) ~~supreme court or the chief justice to aid and assist the supreme court, any district court, or any~~  
4 ~~water court under directions as the supreme court may give, including or to serve as water judge; or~~  
5 (ii) chief judge of the court of appeals to aid and assist the court of appeals.

6 (b) When called, a retired judge's duties include the examination of the facts, cases, and  
7 authorities cited and the preparation of opinions for and on behalf of the ~~supreme court, district court, or~~  
8 ~~water court or to serve as water judge~~ court to which the judge is called to serve. The opinions, when and  
9 if and to the extent approved by the court, may ~~by the court~~ be ordered by the court to constitute the  
10 opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme  
11 court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent  
12 with the constitution of the state.

13 (2) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any,  
14 in responding to the call. In addition, a retired ~~justice or judge~~ or justice is entitled to receive compensation  
15 in an amount equal to:

16 (a) the daily salary then currently applicable to the judicial position in which the duty is rendered  
17 for each day of duty rendered, up to a total of 180 days in a calendar year; and

18 (b) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary  
19 then currently applicable to the judicial position in which the duty is rendered minus an amount equal to  
20 one-twentieth of the monthly retirement benefit that the retired ~~justice or judge~~ or justice is receiving, if  
21 any."

22

23 **Section 12.** Section 19-5-301, MCA, is amended to read:

24 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except  
25 for a judge or justice who elected in writing to remain under the public employees' retirement system on  
26 or before October 1, 1985, a judge of a district court, a justice of the supreme court, a judge of the court  
27 of appeals, and the chief water judge provided for in 3-7-221 must be members of the Montana judges'  
28 retirement system.

29 (2) A judge pro tempore is not eligible for active membership in the retirement system.

30 (3) A member with at least 5 years of membership service who terminates service and does not

1 take a refund of the member's accumulated contributions is an inactive vested member and retains the  
2 right to purchase service and to receive a retirement benefit under the provisions of this chapter.

3 (4) A member with less than 5 years of membership service who terminates service and leaves  
4 the member's accumulated contributions in the pension trust fund is an inactive nonvested member and  
5 is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only  
6 for a refund of the member's accumulated contributions."

7

8 **Section 13.** Section 39-71-2904, MCA, is amended to read:

9 **"39-71-2904. Direct appeal to appellate court or supreme court.** Notwithstanding 2-4-701  
10 through 2-4-704, an appeal from a final decision of the workers' compensation judge ~~shall~~ must be filed  
11 ~~directly~~ with the court of appeals or the supreme court of Montana in the manner provided by law for  
12 appeals from the district court in civil cases."

13

14 **Section 14.** Section 46-20-706, MCA, is amended to read:

15 **"46-20-706. Termination of appeal -- remand.** (1) Upon termination of the appeal, the ~~supreme~~  
16 appellate court shall remand the cause with proper instruction together with the opinion of the court. The  
17 clerk shall return all original documents to the trial court.

18 (2) After the cause has been remanded to the trial court, the appellate court has no further  
19 jurisdiction of the appeal or the proceedings ~~thereon~~ on the cause and all orders necessary to carry the  
20 judgment into effect must be made by the court to which the cause is remanded."

21

22 **NEW SECTION. Section 15. Election TRANSITION -- APPOINTMENT -- staggered terms.** (1) ~~The offices~~  
23 ~~of judges of the court of appeals created by [this act] must be filled initially at the 2002 general election,~~  
24 ~~and the individuals elected shall take office on the first Monday of January 2003. The initial terms must~~  
25 ~~be staggered by electing judges as follows~~ IN JULY 2002, OR AS SOON THEREAFTER AS POSSIBLE, AND PURSUANT  
26 TO THE PROVISIONS OF TITLE 3, CHAPTER 1, PART 10, THE GOVERNOR SHALL APPOINT TO THE COURT OF APPEALS:

27 (a) ~~one judge to a term that begins~~ TWO JUDGES TO TERMS THAT BEGIN in January 2003 and ~~expires~~  
28 EXPIRE in January 2007;

29 (b) two judges to terms that begin in January 2003 and expire in January 2009; and

30 (c) ~~two judges to terms that begin~~ ONE JUDGE TO A TERM THAT BEGINS in January 2003 and ~~expire~~

1 EXPIRE in January 2011.

2 ~~—— (2) The secretary of state shall establish, by lot, which district has an initial term of office of 4~~  
3 ~~years, which two districts have an initial term of office of 6 years, and which two districts have an initial~~  
4 ~~term of office of 8 years. In January 2002, the secretary of state shall give public notice of the date,~~  
5 ~~time, and place of the selection of lots, publicly choose the lots, and announce the terms of office by~~  
6 ~~district.~~

7 (2) APPOINTMENTS MADE UNDER SUBSECTION (1) ARE SUBJECT TO THE PROVISIONS OF 3-1-1013(2)(B), AND  
8 THE POSITIONS ARE SUBJECT TO ELECTION AT THE 2004 PRIMARY AND GENERAL ELECTIONS FOR THE REMAINDER OF THE  
9 RESPECTIVE TERMS.

10 (3) After expiration of the original terms established by this section, the succeeding terms must  
11 be 8-year terms.

12

13 NEW SECTION. Section 16. Codification instruction. [Sections 1 through 8] are intended to be  
14 codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 8].

15

16 NEW SECTION. Section 17. Saving clause. [This act] does not affect rights and duties that  
17 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
18 act].

19

20 NEW SECTION. Section 18. Effective date. [This act] is effective on passage and approval.

21

22 NEW SECTION. Section 19. Retroactive applicability. [This act] applies retroactively, within the  
23 meaning of 1-2-109, to any case on appeal before the supreme court on January 6, 2003, except cases  
24 that must be appealed to the supreme court. The supreme court may assign pending cases to the court  
25 of appeals except cases in which a sentence of death or life imprisonment has been imposed and cases  
26 involving the constitutionality of a statute.

27

- END -